

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN WASHINGTON REGION
STATE OF WASHINGTON

WHIDBEY ENVIRONMENTAL ACTION
NETWORK (WEAN),

Petitioner,

v.

ISLAND COUNTY,

Respondent.

Case No. 12-2-0016

**ORDER ON STIPULATION OF
NONCOMPLIANCE AND SETTING
COMPLIANCE SCHEDULE**

This matter came before the Board in a Prehearing Conference held telephonically on January 14, 2013. Steve Erickson represented the Petitioner. Island County appeared through its attorney, Daniel Mitchell. Board member Nina Carter attended and Board member William Roehl convened the conference as the Presiding Officer.

The Presiding Officer noted at the beginning of the conference that the sole issue raised by the Petitioner was a failure of the County to act.¹ Although the County stated some work had been done, it was willing to stipulate it is out of compliance as it has not completed the review and update of its comprehensive plan and development regulations for fish and wildlife habitat conservation critical areas. The County requested it be allowed a compliance date in December 2014. Both the Presiding Officer and the Petitioner expressed concern in regards to such a lengthy delay. At the suggestion of the Presiding Officer, the parties agreed to attempt to reach agreement on a schedule for compliance. It was noted that any compliance schedule should include regular progress reporting.

¹ Has Island County failed to review and update its comprehensive plan and development regulations for fish and wildlife habitat conservation critical areas by December 31, 2005 as required by RCW 36.70A.130(1)(a), (c), and (4)(b)?

1 On January 24, 2013, the County stated in an email that the parties had spoken but had
2 failed to reach an agreement regarding a compliance schedule, WEAN having requested
3 compliance by July 1, 2014.

4
5 RCW 36.70A.300(3)(b) requires the board to set a date for compliance if it makes a finding
6 of noncompliance:

7 In the final order, the board shall either:

8 (b) Find that the state agency, county, or city is not in compliance with the
9 requirements of this chapter, chapter 90.58 RCW as it relates to the
10 adoption or amendment of shoreline master programs, or chapter 43.21C
11 RCW as it relates to adoption of plans, development regulations, and
12 amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW, in
13 which case the board shall remand the matter to the affected state
14 agency, county, or city. The board shall specify a reasonable time not in
15 excess of one hundred eighty days, or such longer period as determined
16 by the board in cases of unusual scope or complexity, within which the
17 state agency, county, or city shall comply with the requirements of this
chapter. The board may require periodic reports to the board on the
progress the jurisdiction is making towards compliance.

18 Based on the Prehearing Conference discussions, information subsequently received from
19 the County and RCW 36.70A.300(3)(b), the following order is entered.
20

21 ORDER

22 The Board finds Island County has failed to review and update its comprehensive plan and
23 development regulations for fish and wildlife habitat conservation critical areas by December
24 31, 2005 as required by RCW 36.70A.130(1)(a), (c) and (4)(b). This case is remanded to
25 the County for compliance pursuant to this decision within 180 days² and the Board will
26 require periodic reports of the progress the County is making toward compliance.
27
28

29 The following compliance schedule shall apply:
30

31
32 ² Allowance of a compliance period in excess of 180 days is only authorized in cases of unusual scope or
complexity. Neither party has suggested that is the case but nothing in this order should be construed to
forestall such a finding at a later date.

Item	Date Due
Compliance Status Report Due	April 25, 2013
Compliance Due on identified area of noncompliance	July 24, 2013
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	August 7, 2013
Objections to a Finding of Compliance	August 21, 2013
Response to Objections	September 3, 2013
Telephonic Compliance Hearing Call 1-800-704-9804 and use pin 7757643#	September 13, 2013 10:00 am

SO ORDERED this 25th day of January, 2013.

William P. Roehl, Board Member

Nina Carter, Board Member